

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

AAA NEVADA INSURANCE COMPANY,

Plaintiff,

vs.

VINH CHAU; LANG CHAU; DOES 1–20; and
 ROES 1–20 inclusive,

Defendants.

2:08-cv-00827-RCJ-LRL

ORDER

I. INTRODUCTION

Before the Court are Plaintiff AAA's Motion for Sanctions Pursuant to Rule 11 (#52), Plaintiff AAA's Redacted Motion for Summary Judgment (#57), the Buenaventuras' Motion to Dismiss (#63), and the Buenaventuras' Motion to Reconsider (#64). This is an insurance case in federal court based on diversity jurisdiction. Plaintiff Insurance Company AAA Nevada brought suit against its insured for declaratory judgment on the policy limit of its insurance policy with the insured. The Buenaventuras are parties in an underlying state court suit for wrongful death against AAA's insureds, Defendants Vinh Chau and Lang Chau.

The Court has considered the pleadings and argument of all parties. IT IS HEREBY ORDERED that this Court has no jurisdiction and this case is DISMISSED.

IT IS FURTHER ORDERED that AAA's Motion for Sanctions Pursuant to Rule 11 (#52), AAA's Redacted Motion for Summary Judgment (#57), and The Buenaventuras' Motion to Reconsider (#64) are DENIED as moot.

IT IS FURTHER ORDERED that all previous Orders in this case are VACATED as moot.

II. FACTS

Defendant Vinh Chau (“Defendant”) was insured by Plaintiff AAA Nevada Insurance Company (“AAA”) when he was in a car accident with Benjamin Buenaventura, resulting in Buenaventura’s death. Defendant’s policy with AAA included bodily injury liability limits of \$100,000 per person and \$300,000 per accident. Defendant reported the accident to AAA on November 21, 2006. On December 18, 2006, Kristine Jansen of Christensen Law Office wrote to AAA that he represented Clara Buenaventura and Benjamin Buenaventura in a claim for wrongful death against Defendant as a result of the accident. In that letter, counsel for the Buenaventuras stated that his client would settle for the policy limits, provided (1) AAA paid within two weeks and (2) provided proof that those are the only policy limits available to provide compensation for his client. In that correspondence, the Buenaventura’s counsel did not identify all heirs of decedent or lienholders, nor provide a release. AAA spent the next two weeks attempting to contact Jansen to follow up with its questions on these two matters and respond to the offer. It went to the extent of physically visiting his offices, writing a check for the amount, but was unable to get in touch with Jansen.

In the months that followed, AAA continued to attempt to settle the offer with Jansen. Finally in April 2007, Christensen Law Office wrote to AAA that its client was no longer willing to settle for the policy limits and alleged that AAA had failed to respond to the policy limits demand. In September 2007, the parties attempting to intervene in this case filed a wrongful death action against Defendant. They seek a judgment of \$999,997.00.

AAA filed the present complaint in June 2008 for declaratory relief regarding the insurance policy. (#1). In April 2009, Benjamin Buenaventura, Jr., Mark Francis Buenaventura, Fides Palapar, Mary Christine Pangilinan, Laura Buenaventura, Maria Buenaventura, Rosalind Bacus, and Clara Deleon Buenaventura (collectively “the Buenaventuras”) moved to intervene. (#33). This motion was denied without prejudice on June 19, 2009. (#59). The Court also considered AAA’s

1 Motion for Summary Judgment (#28) and granted it, but reversed and/or vacated its prior order
2 granting AAA's motion to file its summary judgment motion under seal (#28). Accordingly, this
3 Court directed AAA to refile its motion for summary judgment with the confidential portions
4 redacted. (#54). AAA did so, filing the present motion for summary judgment under consideration
5 (#57). AAA filed its Motion for Sanctions (#52) prior to the Court's adjudication of AAA's Motion
6 for Summary Judgment (#28) and before the Buenaventuras' Motion to Intervene (#33). The
7 Buenaventuras have filed their Motion to Reconsider (#64) the Courts denial of their intervention,
8 as well as a Motion to Dismiss, claiming that the suit before this Court is not ripe. (#64).

9 **III. DISCUSSION**

10 **A. Proposed The Buenaventuras Can Challenge Jurisdiction**

11 Rule 12(h)(3) of the Federal Rules of Civil Procedure provides that "[i]f a court determines
12 at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." Fed. R. Civ.
13 Pro. 12(h)(3) (2008). The previous version of Rule 12(h)(3) stated "whenever it appears by
14 suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court
15 shall dismiss the action." Fed. R. Civ. Pro. 12(h)(3) (2006). The change, however, was not intended
16 to be substantive. The notes regarding the 2007 Amendments to the Rules state: "The language of
17 Rule 12 has been amended as part of the general restyling of the Civil Rules to make them more
18 easily understood and to make style and terminology consistent throughout the rules. These changes
19 are intended to be stylistic only." Fed. R. Civ. Pro. 12 advisory committee's note (2008).
20 Interpreting the current version of the Rule in light of the previous version of the rule, it is apparent
21 that a third-party may suggest to the Court that it does not have jurisdiction. *See Clissuras v. City*
22 *Univ. of New York*, 359 F.3d 79 (2d Cir. 2004).

23 AAA first contends that the Buenaventuras' motion is based on AAA's alleged failure to
24 state a claim under 12(b)(6), something improper since they are not parties to the suit. AAA points
25 to Nevada law, which does not provide a cause of action for third-party claimants against an alleged

1 tortfeasor's insurers in contract or tort, where the claimant has not obtained a judgement against the
2 alleged tortfeasor. AAA is correct in asserting that a motion under 12(b)(6) may not be made by a
3 non-party and therefore should not be considered because there is no standing. However, as noted
4 earlier, Rule 12 requires that the Court dismiss the case whenever it is discovered that it lacks
5 jurisdiction. So, despite the procedural failings of the Buenaventuras' "motion," the Court can and
6 should consider the arguments therein to determine whether this Court has jurisdiction over the
7 current suit.

8 2. **This Court Does Not Have Jurisdiction**

9 This is a declaratory judgment action in which subject matter jurisdiction is based solely on
10 diversity, so federal law determines the issue of whether or not a justiciable controversy exists
11 within the purview of the Declaratory Judgment Act, 28 U.S.C. § 2201. *MacMillan-Bloedel, Inc.*
12 *v. Firemen's Ins. Co. of Newark*, 558 F. Supp. 596, 598 (S.D. Ala. 1983). State law applies to
13 governance of the rights of parties regarding substantive matters. *See St. Paul Fire and Marine Ins.*
14 *Co. v. Weiner*, 606 F.2d 864, 867 (9th Cir. 1979); *MacMillan-Bloedel, supra*. Unless an actual
15 controversy exists, the Court is without power to grant declaratory relief. 28 U.S.C. § 2201. *See*
16 *also Garcia v. Brownell*, 236 F.2d 356, 357–58 (9th Cir. 1956), *cert. denied*, 362 U.S. 963 (1960).
17 In *Eureka Fed. Sav. & Loan Ass'n v. American Casualty Co.*, 873 F.2d 229, 231 (9th Cir. 1989), the
18 Ninth Circuit determined that declaratory judgment actions are justiciable when: (1) the judgment
19 will serve a useful purpose in clarifying and settling the legal relations in issue, and (2) when it will
20 terminate and afford relief from uncertainty, insecurity, and controversy giving rise to the
21 proceeding. The key question is "whether . . . there is a substantial controversy, between parties
22 having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a
23 declaratory judgment." *Lake Carriers' Ass'n v. MacMullan*, 406 U.S. 498, 506 (1972), quoting
24 *Maryland Casualty Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270, 273 (1941). The Court cannot
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1 grant declaratory relief if the asserted controversy involves only future or speculative rights. *County*
2 *of Santa Barbara v. United States*, 269 F. Supp. 855, 862 (C.D. Cal. 1967).

3 Therefore, it becomes imperative to look at the proposed cause of action to determine if there
4 is a justiciable claim. Under Nevada law, an insurer has an obligation to act in good faith with its
5 insureds. *Pemberton v. Farmer's Ins. Exch.*, 858 P2d 380, 382 (Nev. 1993). Accordingly, "an
6 insurance company may be liable for its failure to accept clear and unambiguous settlement offer
7 within reasonable time limits place on the offer by an injured plaintiff." *Baton v. Transamerica*
8 *Ins. Co.*, 584 F.2d 907, 913–14 (9th Cir. 1978). AAA claims that it brings the current suit to
9 determine liability and allow for appropriate evaluation of settlement demands. AAA contends that
10 the inability to obtain this relief puts it at risk of breaching its duties to its insured, Defendant.

11 However, AAA has failed to establish that the present action is ripe. It is undisputed that
12 AAA has a current contract with Defendant, that there is claim against AAA, and that AAA has the
13 obligation to defend and indemnify. It is also undisputed that Defendant's policy limit with AAA
14 is \$100,000.00 per person and \$300,000.00 per occurrence. The real issue that AAA is seeking to
15 determine is whether or not they are liable for any greater amount, pursuant to a claim for bad faith,
16 which is an affirmative defense alleged in Defendant's Answer. As AAA's Complaint states, "AAA
17 desires a judicial determination of its rights and duties, and a declaration as to its liability under the
18 insurance contract." (Complaint ¶ 24, #1). The Complaint alleges facts that bear on its duty to
19 indemnify and defend. (Complaint ¶¶ 9–21, #1). While a determination as to the liability under the
20 contract may be appropriate for declaratory relief, as there is a risk of immediate effect on an
21 existing controversy, that is not the real issue in this case.

22 This case, in effect, seeks to establish that AAA did not act in bad faith, but no bad faith
23 claim has arisen. While potentially wrongful conduct for an alleged failure of AAA to fulfill its duty
24 to defend or settle already took place, there are, as of yet, no damages. This is distinguishable from
25 cases such as those involving underinsured motorists claims where a party is suing for an amount

1 claimed that was denied by the insurer. In that case, the plaintiff can bring the suit for bad faith
2 because they are alleging damages via the denial of their claim. Each element of bad faith is present.
3 This is distinguishable from a case such as the present one, where there is no actual claim for
4 damages yet. In the case at bar, Defendant has suffered no damages. AAA is defending him in the
5 underlying state suit and Defendant has not been exposed to any liability beyond the *potential*
6 judgment in that suit. In the scenario that a jury find in favor of Defendant, he will never have a
7 claim for bad faith because he will never have damages. In the alternative, if and when he is
8 exposed to such an adverse judgment, assuming wrongful behavior on the part of AAA, Defendant
9 would then have a ripe claim for bad faith.

10 While the present suit would, pursuant to *Eureka Fed. Sav. & Loan Ass'n*, 873 F.2d at 231,
11 serve a useful purpose in clarifying and settling the legal relations in issue and afford relief from
12 uncertainty and insecurity, it fails in the most important respect. Right now, there is no “substantial
13 controversy, between parties having adverse legal interests, of sufficient immediacy and reality to
14 warrant the issuance of a declaratory judgment.” *MacMullan*, 406 U.S. at 506. Without an existing
15 dispute, this case is outside of the Constitutional requirement of a justiciable “case” or “controversy”
16 over which this Court may preside. This Court, therefore, has no jurisdiction to hear this case. As
17 such, all other motions under consideration are moot and previous Orders in this suit should be
18 vacated.

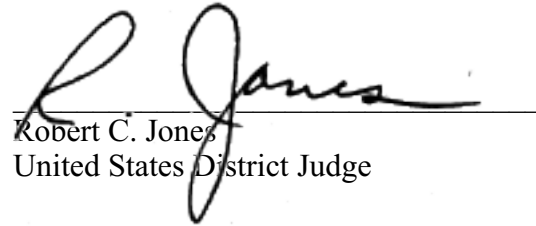
19 IV. CONCLUSION

20 The Court has considered the pleadings and argument of all parties. IT IS HEREBY
21 ORDERED that this Court has no jurisdiction this case is hereby DISMISSED.

22 IT IS FURTHER ORDERED that AAA’s Motion for Sanctions Pursuant to Rule 11 (#52),
23 AAA’s Redacted Motion for Summary Judgment (#57), and the Buenaventuras’ Motion to
24 Reconsider (#64) are DENIED as moot.

1 IT IS FURTHER ORDERED that all previous Orders in this case are VACATED as moot.

2 DATED: November 4, 2009

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5 Robert C. Jones
6 United States District Judge
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